

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NICOLE STEWART, SHANNON FITZGERALD,
and SUMMER APICELLA, on behalf of themselves
and all others similarly situated,

Plaintiffs,
v.

NURTURE, INC.,

Defendant.

Case No. 1:21-cv-01217

ECF Case

NURTURE, INC.’S RESPONSE TO PLAINTIFFS’ MOTION FOR CONSOLIDATION

Nurture, Inc. submits this response to Plaintiff’s Motion for Consolidation. Dkt. No. 13.¹

By their Motion for Consolidation, Plaintiffs seek to consolidate the above-captioned action with *Soto v. Nurture, Inc.*, No. 21-cv-01271 (S.D.N.Y. Feb. 11, 2021); *Jain v. Nurture, Inc.*, No. 21-cv-01473 (S.D.N.Y. Feb. 18, 2021); *Smith v. Nurture, Inc.*, No. 21-cv-01534 (S.D.N.Y. Feb. 19, 2021); *Hampton v. Nurture*, No. 21-cv-01882 (S.D.N.Y. Mar. 3, 2021); and “any subsequently filed or transferred related actions.” Dkt. 14 at 2. Since the filing of the Motion for Consolidation, two additional related actions have been filed in this District: *Westin v. Nurture*, No. 21-cv-02101 (S.D.N.Y. Mar. 10, 2021); and *Strobel et. al. v. Nurture*, No. 21 cv-02129 (S.D.N.Y. Mar. 11, 2021).

In each of the actions mentioned above, the plaintiffs assert causes of action for alleged deceptive and unfair trade practices, and false advertising against Nurture, relating to certain of

¹ Because Nurture’s response to the Complaint in this action is not yet due, Nurture makes this response without waiving any rights or defenses that Nurture has or may assert in this action or in any other action pending against it.

Nurture's baby food products.² While Nurture is not opposed to the consolidation of the actions listed above, Nurture opposes Plaintiffs' request for an order consolidating "any subsequently filed or transferred related actions" against Nurture without attention to the nature of claims asserted and against whom such actions may be filed.

Since February 5, 2021, over 60 lawsuits have been filed in the United States relying on the February 4, 2021 Report of the United States House of Representatives Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform regarding metals in baby food products (the "Report"), including products made by Nurture, among other companies. While Nurture disputes and denies the health-risk related allegations in the Report and in the lawsuits against it, Nurture does not oppose Plaintiffs' request to consolidate putative class actions alleging deceptive and unfair trade practices, and false advertising filed solely against Nurture into a single proceeding before this Court. Nurture opposes the Motion to the extent it seeks to consolidate cases against multiple defendants and/or cases alleging product liability and negligence, if any such actions are subsequently filed in this District.

Subject to the foregoing, Nurture respectfully submits that it does not oppose the Motion for Consolidation to the extent it seeks to consolidate the *Stewart, Soto, Jain, Smith, Hampton, Westin, Strobel* actions.

² Nurture disputes and denies the health-risk related allegations in the suits against it, and will respond accordingly at the appropriate time.

Dated: March 22, 2021

DLA PIPER LLP (US)

By: /s/ Negin Hadaghian

Negin Hadaghian

1251 Avenue of the Americas, 27th Floor

New York, NY 10020-1104

Telephone: 212.335.4500

Facsimile: 212.335.4501

Email: negin.hadaghian@us.dlapiper.com

Angela C. Agrusa (*pro hac vice* pending)

2000 Avenue of the Stars

Suite 400 North Tower

Los Angeles, California 90067-4704

Telephone: 310.595.3000

Facsimile: 310.595.3300

Email: angela.agrusa@us.dlapiper.com

Attorneys for Defendant Nurture, Inc.